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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,177	06/26/2003	Kirk W. Watkins	P150 1030.1	7762

7590 04/28/2004

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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT PAPER NUMBER

3751

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/609,177	Applicant(s) WATKINS, KIRK W.	
	Examiner Timothy L Maust	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 30-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 28 and 29 is/are rejected.
- 7) ☒ Claim(s) 21-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/26/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-29, drawn to a fuel intake device for a vehicle, classified in class 141, subclass 350.
- II. Claims 30-42, drawn to a fuel intake system, classified in class 141, subclass 59.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as being used in a system that doesn't require a coil. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with D. Scott Sudderth on 4/23/04 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-29. Affirmation of this election must be made by applicant in replying to this Office action. Claims 30-42 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

The drawings filed on 6/26/03 are informal, since the letters, numbers and lines are not uniform in nature throughout Figures 7A – 9C. In order to avoid abandonment of this application, corrected formal drawing are now required in reply to the Office action. The correction will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Benjey.

In regard to claims 1 and 6, the Benjey reference discloses a “fuel intake device” (see Fig. 4) comprising a “pivotal body portion” 32’ and “fuel intake passage” 58’, as claimed.

In regard to claims 2-5, “valve” 88’ acts as both a “pressurization” (when open) and “depressurization valve” (when closed).

Claims 1, 6-8, 11-15, 17-19, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Simdon et al.

In regard to claims 1, 6, 7 and 17-19, the Simdon et al. reference discloses a "fuel intake device" 10 comprising a "housing" 200, a "pivotal body" 100 defining an "intake passage" 110, as claimed.

In regard to claim 8, see column 3, lines 34-53.

In regard to claims 11 and 12, the disclosure discusses various plastic and composite materials making up the device.

In regard to claims 13-15, see "cover" 144 (col. 3, lines 54-62).

In regard to claims 28 and 29, the method as claimed would be inherent during normal use and operation of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simdon et al.

Simdon et al. disclose the invention as claimed (discussed supra), but do not disclose the device being made of aluminum. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the device of aluminum (well known in the fuel pipe inlet art), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of

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its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simdon et al. in view of Schmitt et al.

Simdon et al. disclose the invention as claimed (discussed supra), but do not disclose the "cover" having a lock. However, the Schmitt et al. reference discloses another fuel filler apparatus having a "lock" 20 to prevent unauthorized access. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Simdon et al. device to include a lock on the cover in view of the Schmitt et al. reference in order to prevent unauthorized access.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Stiegler et al. reference pertains to another filler pipe having a pivotal body, similar to Applicant's device.

Allowable Subject Matter

Claims 20-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Tue. - Fri. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust
Primary Examiner
Art Unit 3751

Tlm
4/27/04